Restoring Trust in Free Trade

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Free trade agreements (FTAs) are contractual obligations between the parties to reduce or eliminate tariffs on imports and reduce/eliminate trade restrictions in a wide array of economic sectors and services.[1] The goals of FTAs are to promote cross-border trade and investment and provide a stimulus to the economy of the trade partners. FTAs arise from perceptions between trading partners that an FTA would benefit the partners by – at a minimum – reducing or eliminating trade barriers and tariffs and establishing rules with respect to what constitutes a product manufactured within the FTA (rules of origin).[2] There are many benefits ascribed to FTAs such as vigorous global trade and encouraging efficient allocation of resources, enhanced consumer options and overall lower economic costs.

FTAs are cited as encouraging trade liberalization and access to markets creating a more dynamic economic environment. Indeed, expert economic consensus is that free trade fosters economic gains and raises living standards. Moreover, in addition to economic benefits, free trade agreements have been viewed favorably as a tool of broad strategic goals. The signing of FTAs not only signifies economic cooperation between nations, but also cooperation on the political and institutional fronts.

In recent years, a large amount of criticism has been leveled against free trade and in particular FTAs such as NAFTA based on purported unequal benefits. NAFTA has been singled out by FTA critics as a" bad deal" that needs to be re-negotiated. While critics have claimed Mexico has benefited to a greater extent, “the Mexican economy is less than one-tenth the size of the U.S. economy, it is not plausible that trade integration could dramatically shape the giant U.S. economy, even though integration could exert a substantial impact on the relatively small Mexican economy.” [3] Moreover, a substantial part of the critique may be attributable to the high expectations. President Bill Clinton claimed that NAFTA would create 200,000 U.S. jobs within two years and over a million jobs within five years. Yet the expert consensus is that the U.S. benefited substantially from NAFTA despite the possibility that Mexico benefited to a larger extent.

Another avenue of criticism is that FTAs may adversely impact human rights and or cause labor abuses. There are concerns that trade and investment agreements might worsen the problem of poverty and affect the rights of indigenous peoples and minorities. Furthermore, investment and free trade agreements have been critiqued because states have been penalized for adopting regulations, for example to protect the environment, food security. FTAs have been urged not to stomp on human rights and that should an investment agreement include an investment chapter, that

[1] See, e.g., Korea FTA chs. 3, 7, 11, 12, and 18, 46 I.L.M. 642 (2007).
[2] William H. Cooper, Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy Specialist in International Trade and Finance (2014) https://fas.org/sgp/crs/row/RL31356.pdf page 2.
[3] See Gary Cl yde Hufbauer, Cathleen Cimino, and Tyler Moran, NAFTA at 20: Misleading Charges and Positive Achievements 3 (2014).

arbitrators must be so drafted that interference in the domestic regulation of budgetary, fiscal, health and environmental and other public policies are not allowed. The US-Jordan FTA is noteworthy as it was the first to include environmental, labor and e-commerce issues although less comprehensive overall than the prior NAFTA and subsequent FTAs.

Reflecting these concerns over globalization and free trade, voter perception of unfair trade have reached a critical mass in the U.S. and other nations as evidenced by the election of President Donald Trump and UK Prime Minister Theresa May. The U.S. is seeking to revamp its trade practices and update existing FTAs to reflect alleged unfairness, inefficiencies and incorporate new legal developments.

At a time when there are inward-looking trade policies adopted by the U.S. and attack on trade and globalization generally, it is good to remember that trade is critical to America's prosperity - fueling economic growth, supporting good jobs at home, raising living standards and helping Americans provide for their families with affordable goods and services. Trade keeps the U.S. economy open, dynamic, and competitive, and helps ensure that America continues to be the best place in the world to do business.

Yes, free trade can harm some industries. However, in an intensively competitive globalized economic context, countries with more open trade and foreign investment regimes will outclass those countries which have restrictive trade and foreign direct investment policies. Protectionist measures are not conducive to economic growth. Indeed, embracement of FTAs may be viewed as a "defense" against trade rivals entering into FTAs.

Despite the damage done to globalization, free trade is here to stay. Throughout history of international trade, there are periods of time when protectionist agenda disrupted "temporarily" free trade. Examples include the nineteenth century tariff war in Europe. The combination of the shift of agricultural comparative advantage from Britain to the New World, increase of foreign imports and competition, industrial downturn, high tariffs followed by growing sentiment of nationalism, interest groups, and the eruption of WWI led to Britain's abandonment of free trade and decline in international trade. However, over a period of time, free trade has overcome such disruption and sustained the momentum. Negotiations and re-negotiations and adjusting to circumstances and technological advances are healthy. The focus for the next few years should be in ensuring the trade rules are fair and that economic gains distributed to major if not all sectors of the economy.